Federal Court  Cour fédérale

Date: 20110106

Docket: IMM-2213-10

Citation: 2011 FC 3

Ottawa, Ontario, this 6th day of January 2011

Before: **The Honourable Mr. Justice Pinard**

BETWEEN:

HAJERA KHATUN,
MOHAMMAD ROWSHAN BHUYAN,
FAHMIDA BEGUM

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of the Operations Manager of the Visa Section of the High Commission of Canada in Singapore, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") by Hajera Khatun, her son Mohammad Rowshan Bhuyan, and her daughter Fahmida Begum (the "applicants"). The Officer

determined that there were reasonable grounds to believe that the applicants had misrepresented material facts in their application for permanent residence under subsection 40(1) of the Act.

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[2] The applicants are citizens of Bangladesh. The principal applicant's husband died in 1999. Her son Mohammad Kawsar Bhuyan (the "sponsor") has been a citizen of Canada since 2009, having first been granted permanent residence in 2004 on humanitarian and compassionate grounds.

[3] On the sponsor's original immigration form in 2000, he listed his family members. He indicated that his sister Fahmida Begum was born in 1990, and that his brother Mohammad Rowshan Bhuyan was born on August 18, 1980, and was (in 2000) 19 years of age. He indicated the same year of birth for his brother (1980) on another immigration form submitted in 2003, and again in May 2004. However, on his "Application to Sponsor and Undertaking" completed in November 2004, he indicated that his brother's date of birth was August 18, 1986. He claims that he accidentally wrote the wrong year on the 2000 form, and that subsequent mistakes arose because he copied all information from one form to another without making any changes.

[4] On May 6, 2009, Citizenship and Immigration Canada sent a "procedural fairness letter" to the principal applicant, asking for an explanation of the discrepancy in the dates. The sponsor replied to the letter on May 20, 2009. He indicated that he had made an inadvertent mistake on the earlier forms, and he submitted copies of Mohammad Rowshan Bhuyan's birth certificate, passport, and school records, all of which indicated a year of birth of 1986.

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[5] The Officer noted the discrepancies on the forms regarding the year of birth of Mohammad Rowshan Bhuyan, and emphasized that in the original application in 2000, the sponsor had indicated that Mohammad Rowshan Bhuyan was 19, which would accord with a birth year of 1980 or 1981. The Officer acknowledged the receipt of the documents in support of a birth year of 1986, but found that these did not satisfy her that the applicant was genuinely born in 1986. She found that on a balance of probabilities, the applicant had misrepresented a material fact on his application, contrary to subsection 40(1) of the Act. She noted that a birth year of 1980 would mean that the applicant was not less than 22 years of age at the "lock-in date" of the application (November 5, 2004), and was therefore not eligible to be sponsored as a dependent child.

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[6] This matter raises two issues:

a. Did the Officer breach procedural fairness by failing to provide adequate reasons for the rejection of the evidence presented?
b. Was the Officer's finding that the applicants misrepresented information unreasonable with regard to the evidence?

[7] In *Karami v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 912, at paragraphs 14 to 17, Justice James Russell, basing himself on *Dunsmuir v. New Brunswick* ([2008] 1 S.C.R. 190, at paragraph 47), found that the standard of review applicable to an officer's finding

of a material misrepresentation is reasonableness, but that procedural fairness issues are determined on a standard of correctness.

A. *Were the Officer's reasons adequate?*

[8] The applicants argue that the Officer did nothing more than state that she was not satisfied that no misrepresentation had occurred, without any explanation of her rejection of the sponsor's submissions and the documentary evidence provided. The applicants submit that according to the Federal Court of Appeal in *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 15 Imm. L.R. (2d) 199, a decision questioning the credibility of testimony or evidence should be rendered in clear and unmistakable terms.

[9] The respondent submitted an affidavit from the deciding Officer, Patricia Brown. In this affidavit, Ms. Brown explains her decision in detail.

[10] The respondent relies on this affidavit, as well as the Computer Assisted Immigration Processing System (CAIPS) notes that repeat a portion of these reasons, as evidence of sufficient reasons. However, in my opinion, the respondent cannot use this affidavit to supplement the reasons provided in the decision letter. There has been consistent jurisprudence from this Court to the effect that the respondent cannot submit an affidavit during the judicial review proceedings in an attempt to buttress the reasons provided in the decision: *Kalra v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1199, paragraph 15; *Du v. Canada (Minister of Citizenship and Immigration)* (2001), 15 Imm. L.R. (3d) 64 (F.C.T.D.); *Adil v. Canada (Minister of Citizenship and Immigration)*, [2010] F.C.J. No. 1228, paragraph 35.

[11] However, these same cases have held that the CAIPS notes can supplement the reasons provided in the decision (see, for example, *Kalra* at paragraph 15). In this case, the CAIPS notes from January 18, 2010 list the following reasons for the Officer's concerns about the evidence provided:

> -birth certificates in Bangladesh are obtained based on self-declaration;
> -passports in Bangladesh are based on birth certificates;
> -school documents can easily be fraudulently obtained in Bangladesh, and thus cannot be considered to outweigh the declaration on the sponsor's immigration papers;
> -even if the school records are genuine, the school's letter states that the date of birth on record is based on the admissions register, which would be based on the family's declaration;
> -the sponsor made consistent declarations regarding his brother's age on his original form, listing an age consistent with the year of birth 1980.

[12] As the CAIPS notes are admissible as part of the reasons for the decision, and as these notes provide details of the reason for rejecting each piece of evidence submitted, I find that the reasons are adequate and no breach of procedural fairness occurred.

B. *Was the Officer unreasonable in finding that the applicants had misrepresented information?*

[13] In my opinion, though the reasons set out in the CAIPS notes are less detailed than those set out in the Officer's affidavit, and although the expressed reason that school documents can easily be fraudulently obtained in Bangladesh is not supported by evidence, I find that, as a whole, the other reasons are nevertheless sufficient and reasonable. The CAIPS notes emphasize that the sponsor not only originally listed the applicant's birth year as 1980, but stated that the applicant's age in 2000 was 19, which would accord with being born in 1980. While it is possible that the sponsor could have genuinely miswritten the birth year, I find that it was reasonable of the Officer to conclude that

it was unlikely that he also happened to misprint the applicant's age as 19 instead of 13 (the age he would have been if he had been born in 1986 as alleged). The combination of these factors with the incentive to later change the birth year to allow the applicant to immigrate as a dependent child (a factor also alluded to in the CAIPS notes) could reasonably lead to a conclusion of misrepresentation that would be difficult to overcome with documents based on self-declared information.

[14] In this particular context, I find that the "procedural fairness letter" sent on May 6, 2009, by Citizenship and Immigration Canada to the principal applicant, asking for an explanation of the discrepancy in the dates, meets the requirements of procedural fairness in this entire matter.

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[15] For the above-mentioned reasons, the application for judicial review is dismissed.

[16] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision of the Operations Manager of the Visa Section of the Canadian High Commission in Singapore, determining that there were reasonable grounds to believe that the applicants had misrepresented material facts in their application for permanent residence under subsection 40(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2213-10
STYLE OF CAUSE:	HAJERA KHATUN, MOHAMMAD ROWSHAN BHUYAN, FAHMIDA BEGUM v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 29, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	PINARD J.
DATED:	January 6, 2011

APPEARANCES:

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